

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,

v.

CR-03-BE-0530-S

RICHARD M. SCRUSHY,

Defendant.

**GOVERNMENT'S AND DEFENDANT'S JOINT MOTION FOR A
CONTINUANCE OF TRIAL DATE AND FOR THE ENTRY OF A
SCHEDULING ORDER**

The United States Attorney for the Northern District of Alabama (the "Government") and Defendant Richard M. Scrushy jointly move this Court to continue the trial date now set for February 2, 2004 and to enter a Scheduling Order proposed by the parties (attached). The parties make the suggestion of dates and deadlines in the proposed Scheduling Order without knowledge of the Court's schedule and are available to further adjust these dates with the Court.

The Indictment in this matter was unsealed on November 4, 2004, and the Defendant made his initial appearance and was arraigned on that same date. As is custom, an initial trial date falling within the Speedy Trial Act was assigned (January 5, 2004). Mr. Scrushy was represented in those proceedings, as he had been since the conclusion of the SEC hearing in May, by the law firm of Jones, Day. Since that date of the initial appearance and arraignment, Mr. Scrushy has retained the law firm of Chadbourne & Parke as his new criminal defense counsel.

Subsequent to the November 4 proceedings, the Government and the defendant jointly moved to vacate various dates in the initial order and for a status conference to

occur with the Magistrate Judge on December 9, 2004. Prior to that date, the Court issued an Order on December 2, 2003 setting a trial date for February 2, 2004.

Since the time of the Indictment and arraignment, the parties have met and spoken on numerous occasions to discuss the amount of discovery this case will entail, the types of motions that will occur, and a schedule that might accommodate these concerns. The Government has identified approximately one million pages of documentary discovery material. In addition, there will be many electronic files in various media (e.g., hard drives, CD ROMS) which if printed would amount to thousands and thousands of additional pages. There will also be further disclosure of audio and video tapes that will amount to a number of hours to review. Under the current schedule, the Government will not complete the delivery of all of this discovery to the defendant until the middle of January 2004, at the earliest. Depending on decisions concerning the electronic scanning of documents, this date could be even later. To meaningfully review more than one million documents and the other media, the defendant will have to spend considerable time, including his own time, the time of his attorneys, and experts (e.g., forensic accountants). As Chadbourne & Parke, only recently was retained, it will take some time for new counsel to become as familiar with the case as is the Government. It is unrealistic to expect that Mr. Scrushy can adequately prepare and defend himself without the ability to review everything the Government is providing. The Government itself has been involved gathering and reviewing those materials for over nine months.

With respect to even basic motions practice, there likely will be a number of discovery-based motions (e.g., bill of particulars), motion or motions to suppress evidence (e.g., the audio tapes), motions to dismiss counts or the entire Indictment, motions

addressed to a jury selection process, and motions *in limine* to admit or bar various pieces of evidence (e.g., F.R.Evid. 404(b)). Some of these motions may involve evidentiary hearings.

Preparation for jury selection in this high-profile case will also involve more than the average amount of time. The Court's existing Order already envisions the possibility of a written questionnaire and special voir dire. The preparation and potential pre-trial distribution of a questionnaire adds to the amount of time needed before trial. Jury selection itself could take a week or more.

Finally, the Government has estimated that its case could take between three and six weeks (depending on how issues are or are not reduced before trial and on the number of hours and days in each trial week). With these same variables, the defense case could take another three or four weeks. Thus, to be safe, the Court and parties need to look for a trial setting in which there is three months or more available.

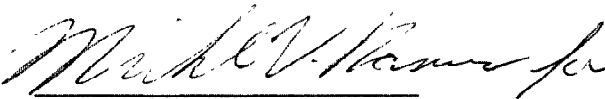
With all of this in mind, the Government and the defendant have met and agreed to a basic schedule that will accommodate the discovery, motions, pre-trial events, and trial. The parties recognize that this proposed schedule depends on the Court's schedule that might entail the same sort of deadlines but with dates (e.g., the trial date) moved to accommodate the Court, court personnel or the likelihood of getting a jury.

The amount of discovery, motions and other proceedings support a request for a continuance and scheduling order and takes the case out of the normal requirements of the Speedy Trial Act. See United States v. Garmany, 762 F.2d 929, 936 (11th Cir. 1985); United States v. Uptain, 531 F.2d 1281, 1286 (5th Cir. 1976)(citations omitted)(citing factors for a continuance). Indeed, the parties have included 18 U.S.C. §

3161(h)(8)(B)(iv) in the proposed Order as the basis for excluding time under the Speedy Trial Act.

For the foregoing reasons and in the interests of the parties preparation and the defendant receiving a fair trial, the Government and Mr. Scrushy request this Court to continue the trial date as proposed and to enter a Scheduling Order which will dictate the timetable under which this case will be litigated and tried.

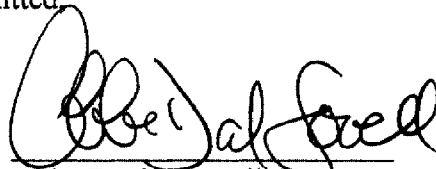
Respectfully submitted,



Alice Martin, Esq,
United States Attorney
Northern District of Alabama

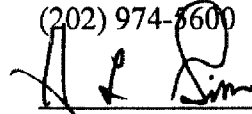
Richard C. Smith, Esq.
Deputy Chief
Fraud Section
Department of Justice

1801 Fourth Avenue North
Birmingham, Alabama 35203
(205) 244-2001



Abbe David Lowell, Esq.
Thomas V. Sjoblom, Esq.

Chadbourn & Parke, LLP
1200 New Hampshire, Ave. NW
Washington, D.C. 20036
(202) 974-8600



H. Lewis Gillis, Esq.

Thomas, Means, Gillis & Seay
1035 Financial Center
505 20th Street North
Birmingham, Alabama 35203
(205) 328-7915

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

UNITED STATES OF AMERICA,

v.

CR-03-BE-0530-S

RICHARD M. SCRUSHY,

Defendant.

ORDER

Having considered the Joint Motion for Continuance, and finding that the indictment in this case falls within the provisions of Title 18, U.S. Code § 3161(h)(8)(B)(iv) due to the quantity of discovery materials to be produced and reviewed and the time needed to file and review pre-trial motions, and finding that it would be unreasonable to expect adequate preparation for pre-trial proceedings or for the trial itself, within the time limits established by Title 18, U.S. Code § 3161, et seq., it is hereby

- (1) ORDERED, that the Motion be and hereby is GRANTED,
- (2) it is further ORDERED, that:
 - a) all discovery under F.R.Cr.P. 16(1)(A), (B), (D), (E), and (F), requested by the defendant, shall be provided by January 23, 2004, with any material becoming available subsequently to be provided immediately;

- b) all reciprocal discovery required to be provided under F.R.Civ.P. 16(b) shall be provided to the government by February 9, 2004, with any material becoming available subsequently to be provided immediately;
- c) the United States Attorney and Fraud Section of the Criminal Division of the Department of Justice will review materials in their possession and reasonably available to them to identify material subject to disclosure under *Brady v. Maryland*, and its progeny and *Giglio v. United States* and its progeny, and, except for materials already supplied to or otherwise available to the defendant under this order, shall provide copies of the same to the defendant as soon as it is identified and reasonably can be made available but no later than January 30, 2004, with any material becoming available subsequently to be provided immediately;
- d) the government will provide the notices required under F.R.Evid. 404(b) no later than March 26, 2004, with any material becoming available subsequently to be provided immediately;
- e) all statements required to be provided by the government under the Jencks Act, 18 U.S.C. § 3500 et seq., shall be provided to the defendant no later than three (3) weeks before trial for witnesses the government then believes will likely be witnesses in its case in chief;
- f) all statements required to be provided by the defendant under F.R.Cr.P. 26.2 shall be provided to the government one (1) week before trial for

witnesses the defendant then believes will be likely be witnesses in his case;

(3) it is further ORDERED, that:

- a) all non-dispositive motions (other than those for which other sections of this Order will apply) shall be filed no later than January 26, 2004, with any oppositions thereto due on February 9, 2004, regardless of the date the motion is filed, and any replies due February 17, 2004, regardless of the date the opposition is filed, and with argument before the Court to occur on a date to be set by the Court;
- b) all dispositive motions shall be filed no later than March 12, 2004, with any oppositions thereto due on March 26, 2004, regardless of the date the motion is filed, and any replies due April 2, 2004, regardless of the date the opposition is filed, and with argument before the Court to occur on a date to be set by the Court;

(4) and it is further ORDERED, that

- a) a pre-trial conference will be scheduled by the Court at its convenience prior to trial;
- b) at least fifteen (15) business days before trial, the government shall provide to defense counsel copies of all exhibits it anticipates using at trial, including any transcripts of audio or video tapes and any type of summaries; any exhibit previously provided can be identified by Exhibit

number without the need to copy it again; the Court requests that a binder of anticipated exhibits be provided for reference from the bench during the course of the trial;

- c) at least fifteen (15) business days prior to the scheduled trial date, the parties must file a single, joint proposed jury charge, including all necessary instructions, or definitions applicable to the specific issues of the case; each requested instruction must be numbered and presented on a separate sheet of paper with authority cited; in joint, proposed jury materials, counsel are to include all necessary instructions or definitions, specifically including (1) the *prima facie* elements of each crime and defense asserted; (2) legal definitions required by the jury; and (3) instructions on any issues unique to this case; if the parties, in good faith, cannot agree on all instructions or definitions, the parties should nonetheless submit a single, unified charge; each disputed instructions, definition, or question should be identified as disputed and labeled to show which party is requesting the disputed language; accompanying each instruction shall be all authority or related material upon which each party relied;
- d) at least fifteen (15) business days prior to trial, the parties must file a single, joint proposed juror questionnaire; if the parties cannot in good faith agree on all questions or precise language of questions to be asked

the panel, the parties should nonetheless submit a single, unified questionnaire; each disputed question, or portions of a question, should be identified and labeled to indicate which party requested the disputed question;

- e) all motions in *limine* shall be filed no later than fifteen (15) business days in advance of the scheduled trial date and shall be accompanied by supporting memoranda containing legal authority relied upon;
- f) at least ten (10) business days prior to trial, the parties shall present to the court any special questions or topics for voir dire examination of the jury venire;
- g) trial briefs, if any, should be filed at least five (5) business days before trial.

(4) it is further ORDERED, that TRIAL of this matter will begin on August 1, 2004.

DONE and ORDERED this ____ day of December, 2003.

KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

Copies to:
Alice Martin, Esq.
Richard Smith, Esq.
Abbe David Lowell, Esq.
Thomas S. Sjoblom, Esq.
H. Lewis Gillis, Esq.